

REMARKS

This is in full and timely response to the above-identified Office Action. The above listing of the claims supersedes any previous listing. Favorable reexamination and reconsideration is respectfully requested in view of the preceding amendments and the following remarks.

In this response, the restriction and election requirements have been fully and adequately responded to. The claims have also been reviewed and amended to improve syntax and form. No new matter has been introduced by any of the amendments.

However, note must be had to the fact that the species election requirement states that no claims are generic but that claim 1, which is the only independent claim in the elected apparatus claims, must, contradictorily, be seen as reading on all the alleged species. The potential for double patenting seems to be accordingly established in that this provides the Applicant with protection under 35 USC § 121 to file divisional applications for each of the non-elected species wherein the same broad claim is presented.

The ramifications of the holding of patentable distinction (between the species) in this instance, cannot be overstressed and if the position is to be maintained it is respectfully requested that further substantiation of the basis for the alleged patentable distinction be made of record. It is further submitted that the restriction and the species election are not made in accordance with either 37 CFR or 35 USC. Indeed, both rejections are made under PCT Rule 13.2. PCT Rule 13 reads as follows:

Rule 13

Unity of Invention

13.1 Requirement:

The international application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ("requirement of unity of invention").

13.2 Circumstances in Which the Requirement of Unity of Invention Is to Be

Considered Fulfilled:

Where a group of inventions is claimed in one and the same international application, the requirement of unity of invention referred to in Rule 13.1 shall be fulfilled only

when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

Inasmuch as the PCT rules do not contain any provision of dealing with "species", it is not understood why the rejection refers to the rules of this treaty as a basis for making the species election requirement. Indeed, just before the statement that "no claims are generic" the Office action makes reference to 37 CFR 1.141 and MPEP 809.02(a).

The action therefore stands in the form of an unusual combination of statutes and it is not clear how these jurisdictional matters can be properly and tenably merged in a manner which supports the positions take by the Patent Office in this Office Action. Reconsideration is courteously solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,
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